

**State of New Hampshire Insurance Department
56 Old Suncook Road
Concord, New Hampshire 03301**

Paula T. Rogers, Commissioner

MEMORANDUM

TO: PHICO Policyholders
FROM: The New Hampshire Insurance Department
RE: The PHICO Insurance Company Liquidation
DATE: February 28, 2002

**IMPORTANT NOTICE TO PHICO POLICYHOLDERS WITH EXTENDED REPORTING PERIOD
("TAIL") COVERAGE**

As a PHICO policyholder, you have already been notified that PHICO Insurance Company is being liquidated, that the Order of Liquidation cancels and terminates all existing PHICO policies effective March 2, 2002, and that, for this reason, you should consider replacing PHICO coverage by March 2, 2002.

You have also been notified by the New Hampshire Guaranty Association that, under New Hampshire law, the Guaranty Association is obligated to pay "covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he or she does so within 30 days of the determination." The Guaranty Association's obligation includes only that amount of each covered claim which, unless it is a claim arising out of a workers' compensation policy, is in excess of \$50 but less than \$300,000. (RSA 404-B: 8)

Among the types of policies issued by PHICO were "claims made" and "extended reporting period endorsements." Extended reporting period coverages are also sometimes referred to as "tail coverage" policies. If you currently have extended reporting period coverage from PHICO, you should know that the Pennsylvania Liquidator is taking the position that all extended reporting period policies of PHICO terminate effective March 2, 2002—effectively cutting off the acceptance of claims reported on or after March 2, 2002. You should also know that the New Hampshire Guaranty Association is taking the position that covered claims under extended reporting period policies arising more than 30 days after February 1, 2002 (i.e., March 2, 2002) must be denied by the Guaranty Association. The Guaranty Association has taken the further position that, for this purpose, such claims "arise" under an extended reporting period policy only when a claim is *reported* to the Liquidator or the Guaranty Association and not when the incident on which the claim is based first occurred.

The New Hampshire Insurance Department is currently exploring whether the Pennsylvania court had authority to nullify PHICO extended reporting period coverage and whether the Guaranty Association may legally be obligated to cover claims under a PHICO extended reporting period policy for incidents that occurred during the claims made policy period even when the claim is reported after the March 2, 2002 date. The Department is also considering whether, if the position of the Pennsylvania court and/or the Guaranty Association is correct, the policyholder is entitled to compensation for unearned premium related to extended reporting period endorsements. The Department's consideration of these questions will not be completed until some time after March 2, 2002 and may require a New Hampshire court opinion.

In the meantime, the Department urges all PHICO policyholders with claims made and/or extended reporting period policies to consult with their insurance agent and legal counsel with respect to the need to replace such coverage. You should know that the New Hampshire Medical Malpractice Joint Underwriting Association has been authorized by the Department to offer a "prior acts" endorsement to healthcare providers whose tail coverage has been affected by the PHICO insolvency in order to cover unreported claims as of March 2, 2002. This includes those providers who are currently practicing and in need of prior acts coverage in conjunction with ongoing claims made coverage as well as those who are retired and simply in need of stand alone prior acts coverage for unreported claims as of March 2, 2002.

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What follows is a discussion of a number of illustrative coverage scenarios together with suggestions as to how claims are likely to be resolved:

1. For healthcare providers who, on March 2, 2002, have an in-force contract with PHICO not including an extended reporting period endorsement, coverage for future unreported losses should be resolved as follows:

If the healthcare provider purchases a new claims made policy which includes a prior acts endorsement dated back to the first year that claims made coverage was purchased with PHICO, then

- Claims reported prior to cancellation of the PHICO policy should be covered by the Guaranty Association, up to its limit of liability or the exhaustion of the policy limits and subject to all other statutory limitations.
- Claims reported after the cancellation of the PHICO policy should be covered by the new carrier.

2. For healthcare providers who, on March 2, 2002, have an in-force contract with PHICO that includes an extended reporting period endorsement and who are currently insured with a replacement carrier that had not issued a prior acts endorsement when the new policy was purchased, coverage for future unreported losses should be resolved as follows:

If the healthcare provider purchases from their replacement carrier a prior acts endorsement dating back to the first year that claims made coverage was purchased with PHICO, then

- Claims reported prior to cancellation of the PHICO policy should be covered by the Guaranty Association up to its limit of liability or the exhaustion of the policy limits and subject to all other statutory limitations.
- Claims reported after the cancellation of the PHICO policy might be covered by the Guaranty Association up to its limit of liability or the exhaustion of the policy limits and subject to all other statutory limitations, depending upon the resolution of the differing interpretations of the Guarantee Fund's obligation mentioned above.
- Claims reported after the cancellation of the PHICO policy should be covered by the new carrier.

3. For healthcare providers who, on March 2, 2002, have an in-force contract with PHICO that consists of an extended reporting period endorsement and who are not currently insured with a replacement carrier (e.g., retired healthcare providers), coverage for future unreported losses should be resolved as follows:

If the healthcare provider purchases a new policy from a replacement carrier that consists of a prior acts endorsement dated back to the first year that claims made coverage was purchased with PHICO for losses incurred on or before the date of retirement, then

- Claims reported prior to cancellation of the PHICO policy should be covered by the Guaranty Association, up to its limit of liability or the exhaustion of the policy limits and subject to all other statutory limitations.
- Claims reported after the cancellation of the PHICO policy might be covered by the Guaranty Association up to its limit of liability or the exhaustion of the policy limits and subject to all other statutory limitations, depending upon the resolution of the differing interpretations of the Guarantee Fund's obligation mentioned above.
- Claims reported after the cancellation of the PHICO policy will be covered by the new carrier as long as the claim occurred on or before the date of retirement.